IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 533.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD, *Petitioner*,

v.

INTERNATIONAL REFORM FEDERATION, a body corporate, *Respondent*.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

ROBERT H. MCNEILL,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 533.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD, *Petitioner,*

v.

INTERNATIONAL REFORM FEDERATION, a body corporate, *Respondent.*

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Your respondent, International Reform Federation, finds no objection to Petitioner's preliminary statement or that defining jurisdiction. (Petition p. 1-2.)

We also agree to the correctness of the issue presented. (Petition p. 2-3.)

However, we seriously object to petitioner's "Summary and Short Statement of the Matters Involved". (Petition pp. 3-4.)

It is apparent from this Summary and Short Statement of the Matters Involved that petitioner endeavors to give the impression to this Court that the Respondent and its officers and agents devote themselves *generally* to political objectives and that such is Respondent's primary purpose and reason for existence.

The Record in this cause, pages 22 to 27 inclusive, shows that the parties to the proceedings agreed upon the evidence which had been submitted to the Court and it was upon this evidence that the case was disposed of by the Trial Justice plus certain exhibits. This statement of evidence represented the facts considered by the Court of Appeals.

While we do not claim that petitioner's Summary and Short Statement of the Matters Involved are unsupported by the Findings of Fact, we do suggest that there are implications and inferences in the summary not supported by the Findings of Fact and the agreed testimony (R. pp. 22 to 37), and we therefore ask the Court, in considering the petition for certiorari to consider only the Findings of Fact by the Trial Justice found on pages 12, 13, 14, 15 and 16 of the Record, and the agreed testimony found on pages 22-27 of the Record.

We call special attention to the following paragraphs from the "Defendants' Counter Statement of Evidence", Record pages 23 and 24:

> "* * * The witness, Clinton N. Howard, further testified that the Federation is supported by voluntary contributions from members in every state of the union, from church budgets and voluntary offerings, and the income from an endowment fund in the original sum of $50,000 (Fifty Thousand Dollars) provided by the will of its first General Superintendent, Dr. William F. Crafts; that at present it has no salaried offices except the witness, Clinton N. Howard, its Superintendent—Editor, and an office staff of two.
>
> "The witness, Clinton N. Howard, further testified that part of the work of the Federation consists of the presentation of facts and arguments against immoral and illegal conditions throughout the various sections of the United States; that one of its purposes is to cooperate with religious, charitable and educational organizations similarly engaged; that it has devoted part of its time and employees and income in fighting for the prohibition of alcoholic liquor traffic, the white slave traffic, traffic in harmful drugs, defense of the Sabbath and purity, the suppression of gambling and political

corruption and the substitution of conciliation for both industrial and international war.

"The witness, Clinton N. Howard, further testified that the Federation, during his superintendency and before, had engaged in efforts to secure new legislation and modification of existing legislation in *accordance with its charter.* The witness stated that the efforts of the Federation to secure such legislation *was not one of its chief objects but incidental and secondary thereto, and that the time and efforts used in securing new legislation had been very little in comparison of the time used in the other activities of the Federation.*" (Italics ours)

The above summary quoted from the Record epitomizes the purpose of respondent and shows its activities for more than forty-six years to have been those exclusively, religiously and continuously devoted to objectives of the highest morality.

REPLY TO REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

I.

Petitioner contends that the instant decision is "in conflict with decisions of the United States Circuit Court of Appeals for the Second Circuit in the case of *Slee* v. *Commissioner of Internal Revenue* (42 Fed. (2d) 184), and the United States Circuit Court of Appeals for the First Circuit in the case of *Vanderbilt, et al.* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360.

We say that this contention is utterly unsupported by the two decisions cited.

First, in our Brief in the Court of Appeals we analyze these decisions, as did Petitioner's counsel, and they were fully analyzed in the Opinion of the Court of Appeals.

The principles announced by Judge Hand in the Slee case, and by Judge Bingham in the Vanderbilt case, sustain our contention that Respondent was exempt from the D. C. Unemployment tax. While both taxpayers in those

cases were held taxable, both Courts defined cases where exemptions would apply and thereby supported our contentions which are sustained by the decision of the Court of Appeals for the District of Columbia that Respondent here comes within the exemption.

The Slee case involved a donation to the American Birth Control League to be used to carry on the general objective of the League, which was the spreading of propaganda in favor of birth control. Birth control, as is widely known, is a controversial subject, and one involved in doubt as to the ethics of the propaganda. The effort to popularize the Birth Control League's program was its main objective, and the Court, upon consideration of the matter of a donation made to the Birth Control League, held that the League must pay the unemployment compensation tax.

However, in the Court's opinion in the Slee case all distinctions for which we are now contending and which are established by the evidence in our case were referred to by the Court. And we submit that had these conditions existed in the Slee case the Birth Control League would have been found to be exempt from tax. This is beyond serious question.

In Judge Hand's opinion in the Slee case, speaking of the American Birth Control League, he said:

> "The only part of its activities which can be thought to touch upon legislation is in directing persons how best to prepare proposals for changes in the law, and in distributing leaflets to legislators and others recommending such changes * * *" (page 185).

He further said on the same page:

> "That the League is organized for charitable purposes seems to us clear, and the Board did not find otherwise. A free clinic, or one where only those pay who can, is a part of nearly every hospital, a recognized form of charitable venture."

The above statements apply to the Respondent in this case.

Now come the distinguishing points in Judge Hand's opinion. On page 185, towards the bottom of the page, this Court will observe that Judge Hand felt that the Birth Control League had no objective except a political objective, that is, the securing of new legislation or modification of existing prohibitive legislation, the effect of which would free physicians and permit them to give information to prospective mothers whereby birth control could be realized. *This was the general objective.* That is, it had no other objective according to its activities and charter. It was distinctly a political organization, undertaking to change the mental attitude and political leanings of the public on a general subject, controversial in character. As to such an organization, Judge Hand said:

> "Political agitation as such is outside the statute, however innocent the aim * * * Controversies of that sort must be conducted without public subvention."

After the above quotation Judge Hand proceeds to define a charity which is not taxable in the following terms:

> "Nevertheless, there are many charitable, literary and scientific ventures that as an *incident to their success require changes in the law.* A charity may need a special charter allowing it to receive larger gifts than the general laws allow. It would be strained to say that for this reason it became less exclusively charitable, though much might have to be done to convince legislators." (Italics ours.)

Likewise the case relied upon by Petitioner, *Vanderbilt* v. *Commissioner of Internal Revenue,* 93 Fed. (2d) 360, is distinctly distinguishable from the case at bar.

In the Vanderbilt case Mrs. Belmont bequeathed to the National Woman's Party — a political organization— $100,000 in the following language:

> "Third. I give and bequeath to National Woman's Party, a corporation organized and existing under and by virtue of the Laws of the District of Columbia, United States of America, the sum of one hundred thousand ($100,000) dollars" (p. 361).

In the constitution and by-laws of the National Woman's Party is found the following clause:

> "The object of this organization shall be to secure for women complete equality with men under the law and in all human relationships."

It will be noted from an examination of the conclusions of the Court that the National Woman's Party was a political organization and that its main objective, as defined by the clause in its constitution just quoted, was political, and that the purpose of its officers and directors and of the corporation itself was to secure for women complete equality with men under the law and in all human relationships. It worked for this objective and none of its work was of a class deemed by the law to be charitable. It was a *political organization.* Further, the Board of Tax Appeals found as a fact from the evidence (and the Court of Appeals adhered thereto) that the corporation was not operated exclusively for educational purposes (page 362).

In this case also the Second Circuit Court of Appeals approved its previous finding in the Slee case, which we have quoted from above, and held that, "*As its Political activities were general,* it seems to us, regardless of how much we might be in sympathy with them, that its purposes cannot be said to be 'exclusively' charitable, education or scientific" (93 Fed. 2d 362). Here it will appear to the Court that the activities of the National Woman's Party along political lines were general and not "mediate." "ancillary," "incidental," or special as in the case of the Respondent herein.

A careful examination of the majority of opinions of the Court of Appeals (page 28 of the Record) will further show how carefully cases such as that of respondent are distinguished from the fact in the Slee and Vanderbilt cases.

The United States Circuit Court of Appeals for the Third Circuit in the case of *Girard Trust Company* v. *Commissioner of Internal Revenue,* 122 Fed. (2d) 108, approved the principles we are contending for here. This Court thor-

oughly analyzed the contentions made by Petitioners here and found them unsustained by principle or authority.

Secondly, the Vanderbilt and Slee cases would not be in conflict with the decision of the United States Court of Appeals of the District of Columbia or controlling, even if the Second Circuit had construed Acts, under scrutiny, contrary to the construction of the Act here, for the reason stated in *Girard Trust Company* v. *Commissioner of Internal Revenue,* 122 Fed. (2d) 108,—because those cases were decided prior to the limitation made by Congress in the 1934 statute which added to the Revenue Act of 1926 the phrase,

> "And no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation" (26 U. S. C. A. 3303-A)

and which recognized that in the Revenue Act of 1926 (which is similar to the Act here), Congress did not intend to and did not impose a limitation upon charitable corporations carrying on propaganda or influencing legislation in order to carry out their principal objects. In fact in 1934 Congress intended to and did amend the Act of 1926 by limiting the extent of charitable corporation's activities in carrying on propaganda and influencing legislation by adding the above quoted phrase. Until the Act here involved is amended by adding a similar phrase, the limitation will not be added by the Court. In the Girard case, *supra,* the Court stated,

> "A limitation, if any, upon the deduction granted in general terms of bequests to religious bodies is for Congress to make and Congress has since made it in the 1934 Statute" (but not in our Statute). "Such limitations not having been imposed by legislation, it is not for a court or administrative officer to impose it. The decision of the Board of Tax Appeals is reversed" (pages 110, 111).

II.

We cannot deny the general statement of petitioners (Page 8 of the Petition) that the decision in this case involves a question of general importance, but in view of the

fact that the question has been decided repeatedly, it is not important that this Court be burdened with a reconsideration and review of these decisions.

As we have shown above, there is no conflict in the opinions of the various Circuit Courts of Appeals, the Second and Third Circuits, or the United States Court of Appeals for the District of Columbia, all these decisions are in harmony in principle. Therefore, the mere fact that this case relates to an important question of taxation in no sense indicates that it should be certified by this Court.

This Court has also approved, in principle, the above decisions of the Second and Third Circuits and the U. S. Circuit Court of Appeals for the District of Columbia—

U. S. v. *Pleasant,* 305 U. S. 357.
Old Colony Co. v. *Pleasant,* 301 U. S. 379.

In these cases this Court held that taxing statutes, as to bequests and income of charitable trusts should be liberally construed.

In their Petition herein, the taxing officials request that this Court give these statutes a strict construction. Classing as "charitable," only those institutions that might be engaged in alms giving or like services. This is directly in the teeth of numerous Federal decisions.

Such also, as argued below, is the uniform holding of the text authorities:

14 C. J. S., Sec. 1, p. 412.
5 R. C. L., Sec. 119, p. 374.

III.

We submit that there is nothing to Petitioner's Point III and we refrain from arguing the same or citing authorities.

Respectfully submitted,

ROBERT H. MCNEILL,
Attorney for Respondent.